IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

DARIN L. HAUMAN,	:	
Petitioner	:	**No. 1:15-CV-1159**
	:	**(Chief Judge Conner)**
v.	:	
	:	
BRIAN V. COLEMAN, THE ATTORNEY GENERAL OF THE STATE OF PENNSYLVANIA,	:	
Respondents	:	

RESPONDENTS' ANSWER TO
PETITION FOR WRIT OF HABEAS CORPUS

Respondents, by their attorneys, file this answer to the petition for writ of habeas corpus filed by petitioner Darin L. Hauman (Hauman). Respondents now state as follows:

1. Hauman is a Pennsylvania prisoner who was sentenced to a period of incarceration of 7 ½ to 18 years following his convictions for possession of child pornography[1] in the Fulton County Court of Common Pleas.

2. On June 12, 2015, Hauman filed a *pro se* petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 wherein he challenges his convictions.

3. In his petition, Hauman raises ten ineffective assistance of counsel claims. Specifically, Hauman alleges that trial and appellate counsel: (1) failed to

[1] 18 Pa.C.S. § 6312(d).

challenge the validity of Hauman's warrantless arrest in Allegheny County; (2) failed to challenge the veracity of the search warrant affidavit of probable cause; (3) failed to challenge "the duplicity" of the information; (4) failed to object to the introduction of other crimes, wrongs or acts at trial; (5) failed to object to a trooper's testimony about emails and a complainant's statements; (6) failed to raise the defense of collateral estoppel; (7) failed to hire an expert witness, with an expertise in the field of Tanner Staging, to rebut the Commonwealth's expert's opinion; (8) failed to object or argue on appeal that the trial court disregarded the Commonwealth's expert's testimony that he could not determine the age of the children depicted in four of the images that were the basis for four guilty verdicts; (9) failed to argue that the Commonwealth did not prove the age and the prohibited sexual act elements of the charged offenses; and (10) that trial and appellate counsel was ineffective based on his cumulative ineffectiveness.

4. On July 10, 2015, this Court issued an order with notice of limitations on the filing of future petitions under 28 U.S.C. § 2254 pursuant to *United States v. Miller*, 197 F.3d 644 (3d Cir. 1999), and *Mason v. Meyers*, 208 F.3d 414 (3d Cir. 2000). Hauman was directed to indicate whether he wished to proceed with the petition as filed or whether he wanted to withdraw the petition so that he could file an all-inclusive petition setting forth all grounds for relief from his conviction.

5. Hauman responded to this order in a July 17, 2015 notice of election, informing this Court that he wished to have the Court rule on his petition as filed.

6. On July 21, 2015, this Court issued an order directing respondents to answer Hauman's habeas petition within 21 days.

7. On August 17, 2015, respondents requested an extension of time in which to file an answer to Hauman's habeas petition pursuant to Fed.R.Civ.P. 6(b).

8. On August 18, 2015, this Court granted that motion and directed respondents to answer the habeas petition on or before September 16, 2015.

9. On September 15, 2015, respondents filed a motion seeking dismissal of Hauman's habeas petition, arguing the petition was not timely filed. Respondents also filed a motion seeking deferral of the obligation to respond the petition on its merits pending the disposition of the dismissal motion.

10. On May 23, 2016, the Court granted respondents' motion to defer further response to Hauman's habeas petition pending the disposition of the dismissal motion.

11. On June 8, 2016, the Court denied respondents' motion to dismiss the untimely petition and directed respondents to answer the petition on or before June 29, 2016.

12. For purposes of 28 U.S.C. § 2244(d)(1), although Hauman's petition was not filed within one year of the date on which his judgment of sentence became

final, this Court has found that the petition is subject to equitable tolling and was thereby timely filed.

13. Hauman is presently in custody for the convictions that he is challenging. *See* 28 U.S.C. § 2254(a).

14. With respect to Hauman's ten ineffective assistance of counsel claims, respondents aver that claims one through eight were presented to the state court, so Hauman has exhausted state court remedies as to those claims. 28 U.S.C. § 2254(b)(1)(A). However, claims nine and ten were either never presented to the state courts or not presented on appeal in the state court; therefore, Hauman has failed to exhaust state court remedies as to those claims. *Id.*

15. Even if exhaustion is excused on the grounds of futility, Hauman's claims are procedurally defaulted for purposes of federal habeas corpus review and there is no excuse for the default as Hauman cannot demonstrate either: 1) "cause" for the procedural default and "actual prejudice" as a result of the alleged violation of federal law; or, 2) that failure to consider the claims will result in a "fundamental miscarriage of justice." *Coleman v. Thompson,* 501 U.S. 722, 749 (1991).

16. The substance of respondents' arguments is set forth in the accompanying memorandum of law.

CONCLUSION

WHEREFORE, respondents respectfully request that this Court enter an order denying the petition for writ of habeas corpus.

Respectfully submitted,

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Date: June 28, 2016

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving one copy of the foregoing ***Respondents' Answer to Petition for Writ of Habeas Corpus*** upon the person and in the manner indicated below:

Via U.S. First-Class Mail,
Postage pre-paid:

Darin L. Hauman
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